

Grant A. Carlson, Esq. - SBN 155933
Friedman, Enriquez & Carlson, LLP
433 North Camden Drive, Suite 965
Beverly Hills, California 90210
Telephone: (310) 273-0777
Fax: (310) 273-1115

Attorneys for Defendants
Nth Connect Telecom, Inc. and Steven Chen

UNITED STATES DISTRICT COURT
CALIFORNIA NORTHERN DISTRICT (SAN JOSE)

VLADIMIR A. BALAREZO, individually and
on behalf of others similarly situated

Plaintiff,

vs.

NTH CONNECT TELECOM INC., and
STEVEN CHEN,

Defendants.

Case No. C 07 05243 JF (PVT)

NOTICE OF MOTION AND MOTION OF
DEFENDANTS NTH CONNECT TELECOM
INC. AND STEVEN CHEN TO CONTINUE
HEARING DATE ON PLAINTIFF'S
MOTION FOR APPROVAL OF *HOFFMAN-
LA ROCHE* NOTICE AND TO CONTINUE
CASE MANAGEMENT CONFERENCE;
DECLARATION OF GRANT A. CARLSON
IN SUPPORT THEREOF

[Filed Concurrently with Stipulation of Parties
to Continue the Hearing on Plaintiffs' Motion
For Approval of Hoffmann-La Roche Notice to
April 18, 2008 and to Continue March 21,
2008 Case Management Conference;
[Proposed] Order Thereon]

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT: Defendants Nth Connect Telecom Inc. and Steven Chen
hereby seek a continuance of the hearing date set for Plaintiff's Motion for Approval of *Hoffman-La
Roche* Notice which is currently set for hearing on April 11, 2008 at 9:00 a.m., before the Honorable
Jeremy Fogel in Department 3 of the above entitled court. Defendants seek a one-week continuance,
to April 18, 2008.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants Nth Connect Telecom Inc. and Steven Chen hereby seek a continuance of the hearing date on plaintiff Vladimir A. Balarezo's Motion for Approval of *Hoffman-La Roche* Notice from Friday, April 11, 2008 for one week, to April 18, 2008. The parties also request that this Court continue the Further Case Management Conference, which is set for March 21, 2008, to April 18th as well.

This request for a continuance is made pursuant to the Northern District's Civil Local Rule 6-3, which provides the procedures for making a motion to change time. This motion satisfies all the relevant requirements for a motion for a continuance, in that it (1) sets forth with particularity, the reasons for the requested enlargement or shortening of time; (2) describes the efforts the party has made to obtain a stipulation to the time change; (3) identifies the substantial harm or prejudice that would occur if the Court did not change the time; (4) discloses all previous time modifications in the case, whether by stipulation or Court order; and (5) describes the effect the requested time modification would have on the schedule for the case.

(1) Reasons for Continuance: Good cause exists for the continuance, because counsel for defendants will be on vacation from April 7, 2008 through April 11, 2008 on a pre-paid family vacation which was scheduled prior to the date defendants were served with plaintiff's motion. This vacation was scheduled based upon defendants' counsel's children's spring break and cannot be rescheduled. (Carlson Decl., attached hereto, at ¶ 4.) Further, good cause exists to continue the March 21, 2008 C.M.C. to April 18, 2008, to preserve time and resources of both the Court and the parties. (Carlson Decl., ¶ 5.)

(2) Efforts to Obtain Stipulation: Defendants' counsel requested that counsel for plaintiff Balarezo stipulate to the continuance, and plaintiff has stipulated both to move the hearing date on the *Hoffman-La Roche* motion and to move the C.M.C. to April 18, 2008. (Carlson Decl., ¶ 6; Exhibits "A" and "B" thereto. See also, Stipulation of the Parties and Order thereon, filed concurrently herewith.)

(3) The Short Continuance Will Not Cause Prejudice: No party will suffer prejudice due

1 to this continuance, because this case was only recently filed and no motion or other deadlines have
2 been set yet. Further, the continuances sought are short ones. (Carlson Decl., ¶7.) On the other
3 hand, counsel for defendants will suffer harm if he is forced to cancel or cut-short his vacation to
4 attend the hearing. (Carlson Decl., ¶ 4.) Defendants will further suffer harm if they are forced to
5 incur the expense of traveling to Northern California twice within a short period of time. (Carlson
6 Decl., ¶ 5.)

7 **(4) Time Modifications In This Matter:** There have been no previous timing modifications
8 in this matter. (Carlson Decl., ¶ 8.)

9 **(5) This Short Continuance Will Have No Effect on the Schedule in the Case.** Finally,
10 a short continuance on the hearing date on plaintiff's *Hoffman-La Roche* motion and the C.M.C. will
11 have no effect on the schedule for the case, as no motion cut-off or other deadlines have been set in
12 this case. (Carlson Decl., ¶ 9.)

13 For all the above reasons and those set forth in the attached declaration of Grant A. Carlson,
14 the defendants respectfully request that this Court continue the hearing date on plaintiff's motion for
15 approval of *Hoffman-La Roche* notice from April 11, 2008 to April 18, 2008, and also that the Court
16 reschedule the March 21, 2008 Case Management Conference to April 18, 2008.

17 Dated: March 17, 2008

18 Friedman, Enriquez & Carlson, LLP

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20 By: /s/
21 Grant A. Carlson, Esq.
22 Attorneys for Defendants
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DECLARATION OF GRANT A. CARLSON

I, Grant A. Carlson, declare under penalty of perjury the foregoing is true and correct.

1. I am an attorney for the law firm of Friedman, Enriquez & Carlson, LLP, attorneys of record for defendants Nth Connect Telecom Inc. and Steven Chen. I am licensed to practice in the State of California. This declaration is based on personal knowledge.

2. I make this declaration in support of Defendants Nth Connect Telecom Inc. and Steven Chen motion to continue the hearing date on plaintiff's motion for approval of *Hoffman-La Roche* Notice and to Continue the March 21, 2008 Further Case Management Conference. The *Hoffman-La Roche* motion is currently set for hearing on Friday, April 11, 2008 at 9:00 a.m. in Department 3, and the Further Case Management Conference is currently set for March 21, 2008 at 10:30 a.m. in Department 3. Defendants seek a continuance of both dates to April 18, 2008, or to any date after April 14, 2008 which is convenient for the Court.

3. This request for a continuance is made pursuant to the Northern District's Civil Local Rule 6-3.

4. Good cause exists for the continuance, because I will on a pre-paid family vacation during the week of April 7-11, 2008. This vacation was planned prior to the time that plaintiff noticed his motion, and the timing is based upon the mutual spring breaks of my two children, one of whom is in college and the other of whom is in elementary school. Because of my children's school schedules, the week of April 7-11, 2008 is the only time we can vacation together as a family. Defendants seek only a short continuance, to any date after the week of April 7-11th, as is convenient for the Court.

5. Good cause also exists to continue the March 21, 2008 C.M.C., so that my clients to not have to incur the expense of paying for me to travel to Northern California twice in a short period of time.

6. Plaintiff has stipulated to the above continuances, and such are documented in the concurrently filed "Stipulation of Parties to Continue the Hearing on Plaintiffs' Motion For Approval of Hoffmann-La Roche Notice to April 18, 2008 and C.M.C. & Order Thereon." In

1 addition, a true and correct copy of defendants' email correspondence with Adam Wang, counsel for
2 plaintiff, in which he agrees to continue the *Hoffman-La Roche* motion is attached hereto as Exhibit
3 "A." A true and correct copy of our email correspondence with plaintiff's counsel, in which he
4 agreed to stipulate to continue the C.M.C. is attached hereto as Exhibit "B."

5 7. No party will suffer prejudice due to this continuance, because there are no motion
6 or other deadlines set in this case, and the continuance sought is a short one. On the other hand, I
7 will be forced to cancel or cut-short my family vacation to attend the hearing if the continuance is
8 not granted, and my clients will be prejudiced if they have to incur additional costs relating to my
9 travel to Northern California twice.

10 8. There have been no previous scheduling modifications in this matter.

11 9. Finally, a short continuance on the hearing date on the motion and the C.M.C. will
12 have no effect on the schedule for the case, as no dates have yet been set in this matter.

13 I declare under penalty of perjury under the laws of the State of California and the Federal
14 Government that the foregoing is true and correct.

15 Dated: March 17, 2008

16 /s/
Grant A. Carlson